Western Union Tel. Co., 57 Kan. 230. There are *dicta* that telegraph companies owe a duty to all persons beneficially interested in the transmission of the message, but these are negatived by decisions holding that one in whose interest a telegram is sent cannot recover unless he is addressee or sender. *Western Union Tel. Co.* v. *Fore*, 26 S. W. Rep. 783 (Tex.). If the duty of telegraph companies faithfully to transmit messages extends to the addressees it would result in a liability which would be unique in the law of torts, and a liability denied in the analogous cases of common carriers, *Ogden* v. *Coddington*, 2 E. D. Smith's Rep. 317, 327. No satisfactory reason, therefore, has yet been found to support a recovery by the addressee of an undelivered telegram except in cases where an agency fairly can be implied from the facts, or where the doctrine of *Lawrence* v. *Fox*, with all its restrictions, can be invoked. The decisions in such states as Massachusetts, where *Lawrence* v. *Fox* is not followed, and New York, where it is greatly restricted, will be awaited with interest.

MEASURE OF DAMAGES IN QUASI-CONTRACT. — Although express contracts and quasi-contracts are essentially different, courts have not been careful to keep them distinct, and, consequently, much confusion has resulted. This is very evident in the treatment of damages, as courts have often allowed these actions to run together at this point. In view of the similarity of cases arising in each form of action such a result is not remarkable. For instance, in a suit on an express contract, the defendant was very early allowed to show, in recoupment of damages, the amount he had suffered by a non-essential breach on the plaintiff's part. *Cutler* v. *Close*, 5 C. and P. 337. A similar case was one where the plaintiff, because of the non-performance of a condition precedent or a material breach, could not sue on his express contract, although he had furnished the defendant with some article of value. To avoid an unjust result, courts have allowed the plaintiff to recover in quasi-contract because of the unjust enrichment of the other party. In the average case, the fair value of the finished article was the contract price, and so the most expedient way of fixing the value ordinarily was to deduct from the contract price whatever was needed in order to finish the article according to specifications. *Kelley* v. *Town of Bradford*, 33 Vt. 35. This, it will be noted, was similar to the measure of damages in a contract action. However, in later cases in quasi-contract, the court, in adopting this method of assessing the amount, failed to notice that it was only a means to an end, that is, to find the value of the product. As a result the aim of the action was lost sight of, and in regard to the damages such cases were treated as if they were actions on express contracts. *Hayward* v. *Leonard*, 7 Pick. 181.

Because of this fact, a recent Massachusetts case is of value, not only for its accurate result but also for its sound reasoning. A plaintiff, unable to recover on an express building contract, sued in quasi-contract on the common counts. Soon after completion, the building became worthless, but the referee was unable to find whether the decrease in value was due to the plaintiff's breach or to other causes. The plaintiff claimed the contract price, deducting whatever damage the defendant could show was due to this breach. The court held, however, that as the plaintiff was entitled to recover only what the building was worth

to the defendant, the burden was on the plaintiff of showing that the loss was not due to him. *Gillis* v. *Cobe*, 59 N. E. Rep. 455. The decision is the more noteworthy, as it overrules an earlier Massachusetts case. *Hayward* v. *Leonard*, *supra*.

Although there are many *dicta* which support the plaintiff's contention, the result is justified by the principles which underlie the action. The builder is barred from any remedy on his contract and is seeking the aid of an action founded on the equitable rule that no one should be allowed to enrich himself at another's expense. *Britton* v. *Turner*, 6 N. H. 481. In such a case the contract is merely an incident. When the completed product is of no value to the defendant, the rule does not apply, and the plaintiff cannot recover for his labor. *Taft* v. *Inhabitants of Montague*, 14 Mass. 282. It is then obviously essential that he show a benefit to the defendant before he makes out even a *prima facie* cause of action. A hard case, of course, results when the article completed has little market value, although the cost of producing it is large, as, for instance, a building adapted only to one particular business. But if such a misfortune is to be avoided, it should be accomplished rather by relaxing the strictness of contract actions than by perverting the rules of quasi-contract.

INJUNCTION AGAINST DIVORCE SUIT IN ANOTHER JURISDICTION. — Although equity has not always asserted the power to interfere with suits in a foreign state, such a power has for some time been clearly recognized. *Lowe* v. *Baker*, Free. Ch. 125; *Lord Portarlington* v. *Soulby*, 3 Myl. & K. 104. If the suit has already been begun, an injunction can be obtained only under peculiar circumstances, which would make it highly unjust to allow its continuance. *Vail* v. *Knapp*, 49 Barb. 299. In a recent New Jersey case the defendant, a citizen of New Jersey, had begun an action for divorce in the courts of North Dakota. The wife, alleging that her husband's residence there was only colorable, and that he was about to practice a fraud upon the courts of that state, and upon herself, obtained an injunction against his proceeding further. *Kempson* v. *Kempson*, 58 N. J. Eq. 94. The issue of the injunction seems justifiable in view of the fact that the result of the foreign suit would in all probability, as was intended, be an avoidance of the laws of the parties' domicil. *Deshon* v. *Foster*, 4 Allen, 545. To compel the wife to undergo the difficulty and expense of fighting the action in a foreign jurisdiction would be highly unjust. *Kittle* v. *Kittle*, 8 Daly, 72. The injunction was properly served upon the defendant, who disregarded it, however, and obtained a final decree of divorce. He returned to New Jersey with a new wife, and was promptly committed for contempt. The Vice Chancellor then decreed a somewhat novel punishment; the defendant is fined, and is further to be imprisoned until he shall take proper proceedings to have the divorce decree set aside. *Kempson* v. *Kempson*, 48 Atl. Rep. 244 (N. J., Ch.). Upon an original application for an injunction to compel such proceedings the court would undoubtedly decline to interfere. This is not upon the ground that equity refuses to order a positive act to be done in a foreign jurisdiction, although intimations to that effect may be found. *Port Royal R. R. Co.* v. *Hammond*, 58 Ga. 523. The leading example of the exercise of such a power is *Penn* v. *Lord Baltimore*, 1 Ves. Sen. 444. Equity will issue an injunction however only where the act to be performed